

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ORLANDO PEAY,

Petitioner,

v.

BLAINE LAFLER,

Respondent.

Case No. 07-11003

Hon. Lawrence P. Zatkoff

ORDER DENYING A CERTIFICATE OF APPEALABILITY

Petitioner Orlando Peay has appealed the Court's decision denying his petition for the writ of habeas corpus. As such, he has filed a motion for a certificate of appealability [dkt 37].

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The habeas petition challenged Petitioner's convictions for first-degree murder and possession of a firearm during the commission of a felony (felony firearm). The first habeas claim alleged that there was an improper assignment of Petitioner's case to the trial judge and, therefore, the trial judge lacked jurisdiction. The second and third habeas claims alleged that Petitioner was twice placed in jeopardy as a result of the multiple attempts to prosecute him. The fourth and final habeas claim alleged that Petitioner was denied access to the state courts because the trial court untimely delivered a copy of one of its orders to him. The Court determined that Petitioner's first

and fourth claims alleged mere violations of state law and were not cognizable on habeas review. The Court adjudicated Petitioner's constitutional claims on their merits and concluded that Petitioner's rights under the Double Jeopardy Clause were not violated.

Reasonable jurists would not find the Court's assessment of Petitioner's constitutional claims debatable or wrong. Accordingly, the Court DECLINES to issue a certificate of appealability.

IT IS SO ORDERED.

S/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: October 29, 2008

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on October 29, 2008.

S/Marie E. Verlinde
Case Manager
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